

Message Text

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PAGE 01 MANILA 18681 261034Z

ACTION EA-06

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C O N F I D E N T I A L MANILA 18681

LIMDIS

C O R R E C T E D C O P Y (TEXT)

CINCPAC FOR POLAD

E. O. 11652: GDS

TAGS: SHUM, PINT, RP

SUBJECT: AQUINO CASE: NEXT STEPS

REF: A. MANILA 16709 B. MANILA 18672

1. SUMMARY. MILITARY TRIBUNAL LATE EVENING NOVEMBER 25 FOUND SENATOR BENIGNO AQUINO JR. GUILTY OF SEVERAL COUNTS OF SUBVERSION AS WELL AS MURDER AND ILLEGAL POSSESSION OF FIREARMS. HE AND CO-ACCUSED COMMUNIST NEW PEOPLE'S ARMY (NPA) LEADERS BERNABE BUSCAYNO AND VICTOR CORPUS HAVE BEEN SENTENCED TO DEATH BY FIRING SQUAD. HOWEVER, TRIBUNAL'S RULING IS AUTOMATICALLY SUBJECT TO REVIEW BY COURT OF MILITARY APPEALS AND THEN SUPREME COURT. PRESUMABLY MARCOS-CONTROLLED SUPREME COURT WILL DENY APPEAL, AFTER WHICH PRESIDENT MAY BE EXPECTED TO COMMUTE SENTENCE OR ISSUE PARDON. EMBASSY'S RECOMMENDED COMMENT BY DEPARTMENT SPOKESMAN IS IN PARAGRAPH 7. END SUMMARY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 MANILA 18681 261034Z

2. TRIBUNAL RULING. PROSECUTION RESTED ITS CASE AGAINST AQUINO IN MARCH 1977. SINCE THEN, DEFENSE LED BY SENATOR JOVITO SALONGA HAS ATTEMPTED TO HAVE CASE DROPPED OR TRANSFERRED TO CIVIL COURTS AND HAS REFUSED TO PRESENT EVIDENCE BEFORE MILITARY TRIBUNAL. SUPREME COURT POSTPONED TRIBUNAL HEARINGS IN SEPTEMBER AND OCTOBER TO HEAR

ARGUMENTS IN AN APPEAL BY AQUINO'S MOTHER. MOST RECENT SUPREME COURT HEARING WAS NOVEMBER 24. SUPREME COURT DID NOT EXPLICITLY POSTPONE NEXT SCHEDULED MILITARY TRIBUNAL HEARING THE FOLLOWING DAY, NOVEMBER 25, AND IT WAS CONVENED. AQUINO REFUSED TO PRESENT TESTIMONY ON GROUNDS HIS MOTHER'S APPEAL RE TRIBUNAL'S JURISDICTION WAS STILL PENDING BEFORE SUPREME COURT, INSISTING (ACCORDING TO TIMES-JOURNAL): "I WILL ONLY PRESENT MY EVIDENCE TO THE PROPER COURT." MILITARY TRIBUNAL THEN ANNOUNCED IT CONSIDERED THE CASE TO HAVE BEEN SUBMITTED FOR RESOLUTION, ADJOURNED TO DELIBERATE, AND ANNOUNCED ITS DECISION AT ABOUT 10:15 P.M. AS HE WAS LED FROM COURTROOM, AQUINO REPORTEDLY SAID, "IF THEY REALLY BELIEVE I AM GUILTY, I WANT TO BE SHOT TOMORROW."

3. NEXT STEPS. PRESIDENTIAL DECREE 1165, DATED JUNE 24, 1977, CALLS FOR AUTOMATIC REVIEW OF ALL ASPECTS OF CASES INVOLVING DEATH PENALTY BY COURT OF MILITARY APPEALS AND THEN SUPREME COURT. REGARDING THE LATTER, PD 1165 PROVIDES THAT "WHERE THE ORIGINAL OFFENSE CHARGES IS PUNISHABLE WITH DEATH OR LIFE IMPRISONMENT, THE REVIEW MAY BE ON QUESTIONS OF LAW AND FACT; (AND THAT) WHERE THE SENTENCE IMPOSED IS DEATH, THE RECORDS OF THE CASE SHALL BE FORWARDED TO THE SUPREME COURT FOR REVIEW AND JUDGMENT, WHETHER THE ACCUSED SHALL HAVE APPEALED OR NOT, AND AFFIRMANCE MUST BE ON TEN (10) AFFIRMATIVE VOTES." CONFIDENTIAL

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PAGE 03 MANILA 18681 261034Z

(COMMENT: THE SUPREME COURT IS UNDER MARCOS' FIRM CONTROL. THE COURT NOW HAS 14 MEMBERS, PROBABLY ONLY TWO OF WHOMR ARE INDEPENDENT ENOUGH TO SIDE WITH AQUINO IN THE APPEAL. END COMMENT.)

4. ACCORDING TO TIMES-JOURNAL, AQUINO'S CONVICTION "RENDERED ACADEMIC THE FORMER SOLON'S SEVERAL PETITIONS TO THE SUPREME COURT SEEKING TO BAR THE MILITARY TRIBUNAL FROM TRYING HIM."

5. WE WILL BE IN TOUCH WITH SALONGA AND OTHERS TO GET AQUINO'S REACTION TO THESE EVENTS AS SOON AS POSSIBLE.

6. COMMENT: GUILTY VERDICT AND DEATH SENTENCE FROM MILITARY TRIBUNAL COMES AS NO PARTICULAR SURPRISE. SENATOR SALONGA HAD INFORMED EMBOFFS NOVEMBER 24 THAT MARCOS HAD APPARENTLY DECIDED TO SPEED UP AQUINO'S TRIAL (REF B), BUT SALONGA DID NOT INDICATE THEN THAT HE EXPECTED THE TRIAL TO END QUITE SO ABRUPTLY. THE MANDATORY APPEALS PROCESS, WHICH IS ALSO FULLY UNDER MARCOS' CONTROL, WILL PROBABLY TAKE PLACE REASONABLY PROMPTLY, BUT NOT SO RAPIDLY AS TO MAKE IT APPEAR THAT AQUINO IS BEING RAIL-

ROADED. AT SOME POINT, PROBABLY AFTER ALL APPEALS
HAVE BEEN MADE AND PRESUMABLY DENIED, WE WOULD EXPECT
MARCOS TO STEP IN AND MAGNANIMOUSLY COMMUTE AQUINO'S
SENTENCE OR PARDON HIM. END COMMENT.

7. IN VIEW OF EXPECTED US MEDIA INTEREST, WE RECOMMEND
DEPARTMENT SPOKESMAN RESPOND TO QUESTIONS ALONG FOLLOWING
LINES: "OUR EMBASSY IN MANILA IS FOLLOWING THE CASE VERY
CLOSELY. WE NOTE THAT UNDER PHILIPPINE LAW THERE IS
AUTOMATIC APPEAL OF ALL CASES INVOLVING A DEATH PENALTY
TO THE COURT OF MILITARY APPEALS AND THEN TO THE SUPREME
COURT."

8. RECOMMENDATIONS FOR EMBASSY ACTIONS IN THIS CASE ARE
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PAGE 04 MANILA 18681 261034Z

BEING DEVELOPED AND WILL BE PROVIDED SHORTLY.
NEWSOM

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